IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4012 OF 2005
IN
CRIMINAL APPEAL NO.545 OF 2005

Rajaram Kalu Namdeo. ..Applicant.

V/s.

The State of Maharashtra. ..Respondent.

Mr.M.S.Karnik for applicant.

Ms.S.V.Gajare, APP for State.

CORAM: A.M.KHANWILKAR,J

DATE : DECEMBER 9, 2005.

P.C. :

1. Heard counsel for the parties.

2. Counsel for the applicant submits that accused No.2 has been released on bail for which reason applicant/accused No.1 also deserves to be enlarged on bail. He further submits that applicant has already undergone 8 months imprisonment for which reason lenient view may be taken and applicant be enlarged on bail. It is not possible to accede to the submission in so far as the present applicant is concerned, as he is the main accused who has committed rape on the minor, which has been proved by the prosecution. I will have to proceed on the

assumption that the finding of fact recorded by the court below in so far as the applicant/accused is concerned is correct. The evidence plainly substantiate the prosecution case. The offence in question is serious offence. The trial court has awarded sentence of 10 years to the applicant.

3. To get over this position, counsel for the applicant submits that the accused No.2 who has been named and found guilty on account of common intention by virtue of provision of Section 376(2)(a) of the I.P.C. has been released on bail and for which reason the applicant also should be released on bail. It is not possible to accede this submission. I have already recorded that role of the accused No.1 is of main accused. The prosecution has established that position. Even if it is was simplicitor case under Section 376 of I.P.C. for the nature of offence, in my view, question of releasing on bail does not arise.

4. The applicant may renew the request for bail, if the appeal cannot be heard within one year from today. It will be open to the applicant to prepare paper book so as to facilitate expeditious hearing of the appeal. Liberty to apply. Application disposed

of accordingly.